2nd Defendants' letter of February 20, 1980 purporting to countermand their previous instructions what should it have done? It should have paid the said amount out of the L/credit to the Plaintiffs nevertheless or it should have applied to the court for relief by way of interpleader as advised by Lord Cranworth L.C. in *Jones* v. *Farrell*[5] At the very least, it should have informed the Plaintiffs about the 2nd Defendants' letter and given them enough time to apply for an injunction or to take any other steps to protect their interests. Instead, the bank chose to pay the proceeds of the L/credit to the 2nd Defendants.

In my judgment, therefore, the 1st Defendants are liable to pay to the Plaintiffs the sum of S$240,390.06 claimed by them with interest thereon at 9% p.a. from the February 20, 1980 to the date of this judgment with costs. The 1st Defendants are entitled to be wholly indemnified by the 2nd Defendants and I order accordingly.

Order accordingly.

Solicitors: *Laycock & Ong; Rodyk & Davidson.*

THE "REUNION"; UNI-OCEAN LINES PTE. LTD. v. KAMAL SOOD t/a TOSHIBA KAMAL ENTERPRISE

[O.C.J. (Chua J.) August 2, 1983]
[Singapore – Civil Suit No. 335 of 1980]

Shipping Law – Charterparty – Cancellation of charterparty by defendant – Claim for damages by plaintiff – Once defendant had repudiated charterparty plaintiffs need not proceed to be ready on appointed date.

Contract – Charterparty – Repudiation of – Once defendant had repudiated charterparty plaintiffs need not proceed to be ready on appointed date.

The plaintiffs' claim against the defendant was for loss and damage suffered by the plaintiffs as a result of the defendant cancelling the Charterparty. The said Charterparty was executed by the parties on January 16, 1980 whereby the plaintiffs agreed to carry 5000 metric tons Minmax bitumen in drums for the defendant on the M.V. "Reunion" for a voyage from Singapore to Chalna, Bangladesh. The plaintiffs were the dispondent owners of the "Reunion".

It was an express term of the Charterparty that the "Reunion" would be expected ready to load on January 10 to 25, 1980. The "Reunion" arrived in Singapore from Bangkok on January 18 and commenced discharging her cargo on the same day. The discharge of the general cargo was completed on January 22 and the "Reunion" was preparing to move to Jurong Port. However, there was no berth available although she had reserved a berth for the same day. The "Reunion" was arrested on that day too but released a day later. By telex dated January 22, the defendant cancelled the Charter and thereby repudiated the contract. The defendant contended that the failure of the plaintiffs to give the required notice under Clause 21 evinced their intention not to be bound by the Charterparty and/or evinced their inability to perform the same coupled with the arrest of the "Reunion" justified the defendant's cancellation of the Charterparty.

Held: once the defendant had repudiated the Charterparty and had evinced an intention that she no longer would ship on the plaintiffs' vessel the plaintiffs need not proceed to be ready on January 25. The onus was on the defendant to show that the plaintiffs could not be ready on January 25 when the defendant repudiated the Charterparty on January 22. The defendant must also prove that at the date of cancellation the vessel was in such a condition that the plaintiffs must necessarily – not might – be unable to comply with their obligation to load the defendant's cargo. This was what the defendant had failed to do.

Cases referred to:

(1) *Christie Vesey* v. *Helevetia* [1960] 1 Lloyd's Rep. 540.
(2) *The Madeleine* [1967] 2 Lloyd's Rep. 224.
(3) *The Mihalis Angelos* [1971] 1 Q.B. 164.
(4) *Aktiebolaget Nordiska Lloyd* v. *J. Brownlie & Co (Hull) Ltd.* (1925) 30 Com. Cas. 307.
(5) *Noemijulia Steamship Co. Ltd.* v. *Minister of Food* [1951] 1 K.B. 223.

CIVIL SUIT.

Haridass Ajaib for the plaintiffs.

S.B. Shah (*G. Murugaiyan* with him) for the defendant.

Cur. Ad. Vult.

Chua J.: The plaintiffs' claim against the defendant is for loss and damage suffered by the plaintiffs as a result of the defendant cancelling the Charterparty executed in Singapore on the January 16, 1980, by the defendant (the Charterparty), whereby the plaintiffs agreed to carry 5000 metric tons Minmax bitumen in drums for the defendant on the plaintiffs' motor vessel the "Reunion" for a voyage from Singapore to Chalna, Bangladesh.

The plaintiffs are the dispondent owners of the "Reunion". The defendant carries on business in Calcutta, India. The Charterparty was dated January 10, 1980, but was executed in Singapore on January 16, 1980, by the defendant's local representative, Jim Ellis.

On the January 10, 1980, the "Reunion" was

in Bangkok and was expected to be in Singapore on January 16 for discharging. It was an express term of the Charterparty that the "Reunion" would be expected to load on January 10 to 25, 1980.

The "Reunion" arrived in Singapore from Bangkok on January 18 and commenced discharging her cargo on the same day. The discharge of the general cargo was completed on January 22 and the "Reunion" was preparing to move to Jurong Port. However, there was no berth available though she had reserved a berth for 1100 hrs. for the same day. At 1540 hrs. the same day the "Reunion" was arrested. She was released a day later at 1645 hrs.

By telex dated January 22, 1980, at 1130 hrs (AB 21) the defendant alleged that the plaintiffs were in breach of the Charterparty and in particular Clause 21. The plaintiffs immediately replied on the same day by telex at 1139 hrs expressing surprise and stating that the defendant's local agent Jim Ellis was not only informed by telex of January 12 and 21, but also by telephone that the vessel would be in loading port by January 25 and rejecting the defendant's allegation that the plaintiffs were in breach of the Charterparty. By telex dated January 22, (AD 22), the defendant cancelled the Charterparty and thereby repudiated the contract. The plaintiffs accepted the repudiation. Legal proceedings commenced thereafter.

The defendant's contention is this. The plaintiffs had failed to give the required notice under Clause 21 of the Charterparty; that as the "Reunion" was under arrest from January 22 to January 23, it was anticipated by the defendant's representative in Singapore that the "Reunion" would not be able to load cargo by the January 25, as required by the Charterparty; that the failure of the plaintiffs to give the required notice under Clause 21 evinced their intention not to be bound by the Charterparty and/or evinced their inability to perform the same; that the plaintiffs' said failure and conduct coupled with the arrest of the "Reunion" justified the defendant's cancellation of the Charterparty on January 22 at 1648 hrs. and that the defendant thereafter obtained an alternative vessel to load the defendant's cargo, in discharge of her duty to mitigate her damage. The defendant further contends that her aforesaid justification in cancelling the Charterparty is supported by the events that happened after the cancellation of the Charterparty and which events clearly show that even if the defendant had not cancelled the Charterparty the plaintiffs would not have been able to load the defendant's cargo by January 25 at Port Merlimau.

The defendant submits that for these reasons she was entitled to cancel the Charterparty in anticipation of the plaintiffs' breach of Clause 1 of the Charterparty.

Clause 21 requires that

"Owners or Master to telex 10 days before arrival to Charterers attention at telex RS 23125 Singapore also telex same 72, 48, 24 hours prior loading to shipper and charterer at Singapore."

The Charterparty though dated the January 10, 1980 was in fact signed by the defendant's representative on January 16. Since the loading date of the Charterparty was to be on January 25, then the ten days' notice ought to be January 15 which in effect was not possible as the Charterparty was not executed by the defendant then. The plaintiffs, however, were in daily contact with the defendant's local agent in Singapore and they had in fact in all their telexes to the defendant's local agent informed the defendant's local agent that the loading date for the defendant's goods would be January 25 as was stated in the Charterparty.

As regards the 72 hours' notice to be given to the defendant, the plaintiffs had served the necessary notice to the defendant a day earlier (See AB 19). A further notice was served by the plaintiffs on January 22 in their reply to the defendant's telex of the same date one minute after the defendant had alleged that the plaintiffs were in breach of the Charterparty particularly Clause 21 (See AB 21).

Having regard to these matters it is clear that the plaintiffs were not in breach of Clause 21.

Clause 11 provides:

"Should the vessel not be ready to load (whether in berth or not) on or before the date indicated in Box 19 charterers have the option of cancelling this contract ..."

A charterer is not entitled to cancel under the cancelling date even though it is clear that the owner will be unable to tender the vessel in time: *Christie & Vesey* v. *Helevetia,*[1] *The Madeleine,*[2]; *The Mihalis Angelos,*[3].

Roskill, J., in *The Madeleine*, said with reference to the first sentence of Clause 22 (the cancelling clause), (p. 241):

"... if there were what I will call an anticipatory right to cancel under the clause, it could only arise by necessary implication into Clause 22. For my part, I have great difficulty in seeing how, where there is an express right given to cancel if the vessel is not delivered by May 10 (the cancelling date), an implied right can concurrently exist to cancel at some earlier point of time, namely, when it becomes inevitable that the stated cancelling date will not be able to be attained by the ship ... I would say that however reasonable it might be so to imply (such) a term ... it cannot be said to be necessary so to do for the purpose of giving business efficacy to the contract because the contract gives an express right to cancel at a certain date and not at any earlier time."

This statement was approved by a majority of the Court of Appeal in *The Mihalis Angelos*, in holding that in the case of a voyage charter the right to cancel did not arise before the cancelling date.

In *Aktiebolaget Nordiska Lloyd* v. *J. Brownlie & Co. (Hull), Ltd.*[4] the English Court of Appeal held that notice of readiness to load was immaterial for the purposes of the cancelling clauses.

It follows that even if no notice under Clause 21 was given, the defendant did not have the right to cancel under Clause 11.

The fact that the charterer may not exercise his option to cancel under this clause before the cancelling date does not affect any rights the charterer may have at common law, or the time at which such rights may be exercised. Roskil J. in *The Madeleine* said (p. 244):

"Of course, the fact that there is no contractual right to cancel in advance does not prevent a charterer seeking to claim the right to rescind in advance of the cancelling date, as the learned editors of *Scrutton* put it "at common law" ... Where the charterer seeks to say that the contract has been frustrated or that there has been an anticipatory breach which entitles him to rescind, then he has such rights as are given to him at common law."

The "Reunion" arrived from Bangkok on the January 18, 1980 and commenced discharging her cargo on the same day. The discharge of the general cargo was completed on January 22 at 0600 hrs. and from 0600 hrs. to 1540 on the same day the "Reunion" was preparing to move to Jurong Port. However, there was no berth available though a berth had been reserved for her for 1100 hrs. for the same day. At 1540 hrs. on the same day, the "Reunion" was arrested. It was a wrongful arrest. She was released the next day at 1645 hrs without any security being tendered. She was berthed at Jurong Port on January 24.

The defendant says that because the "Reunion" only berthed on January 24, the plaintiffs would not have been able to perform the Charterparty and be ready to load on January 25.

Once the defendant had repudiated the Charterparty and had evinced an intention that she no longer would ship on the plaintiffs' vessel the plaintiffs need not proceed to be ready on January 25. The onus is on the defendant to show that the plaintiffs could not be ready on January 25 when the defendant repudiated the Charterparty on January 22. The defendant must also prove that at the date of the cancellation the vessel was in such a condition that the plaintiffs must necessarily – not might – be unable to comply with their obligation to load the defendant's cargo (*Noemijulia Steamship Co. Ltd.* v. *Minister of Food*,[5]). This the defendant has failed to do.

The evidence adduced by the plaintiffs shows that if the defendant had not cancelled the Charterparty, the plaintiffs would have been able to berth the "Reunion" at Jurong Port on the afternoon of January 23 and discharge the balance of cargo of 3,800 tons of berite ore and tender the vessel to the defendant at the latest on January 25. If the plaintiffs had no real intention of keeping to the terms of the Charterparty or felt that they had no hope of keeping January 25 appointment, they would not have gone to the extent of seeking on January 22 and obtaining the approval of the Sheriff on January 23 to move the "Reunion" to Jurong Port for unloading purposes.

The defendant says that the plaintiffs had doubts as to their ability to offer the vessel to receive the defendant's cargo on January 25. The vessel arrived in Singapore from Bangkok two days late and the plaintiffs were trying to have the cancelling date extended to January 31.

Clause 1 with Box 9 is the expected ready to load clause. It is clear that the plaintiffs had on the January 10, 1980 every reason to expect that the "Reunion" would load by the January 25 and when the Charterparty was executed on January 16 it was clear in the minds of both the plaintiffs and the defendant that the plaintiffs reasonably expected the vessel to load on the January 25.

In *The Mihalis Angelos*, Edmund Davies L.J. stated (p. 197):

"Those words (excepted ready to load under this charter) mean that, in the light of the facts known to the owner at the time of making the contract, he honestly expected that the vessel would be ready as stated and, further, that such expectation was based on reasonable grounds; *Samuel Sandy & Co.* v. *Keighley Maxted & Co.* (1922) 27 Com. Cas. 296."

And Megaw L.J. said (P. 204):

"It is not disputed that when a charter includes the words 'expected ready to load ...' a contractual obligation on the part of the shipowner is involved. It is not an obligation that the vessel will be ready to load on the stated date, nor about the stated date, if the date is qualified, as here, by 'about'. The owner is not in breach merely because the vessel arrives much later, or indeed does not arrive at all. The owner is not undertaking that there will be no unexpected delay. But he is undertaking that he honestly and on reasonable grounds believes, at the time of the contract, that the date named is the date when the vessel will be ready to load. Therefore in order to establish a breach of that obligation the charterer has the burden to showing that the owner's contractually expressed expectation was not his honest expectation, or, at the least, that the owner did not have reasonable grounds for it."

In my view there is therefore no breach of Clause 1 and Box 9 by the plaintiffs.

The defendant says that because repairs were done to the "Reunion" from the January 28, 1980, till the February 14, 1980 and because there was changing of deck plates and as 2460 sq. ft. of deck plates were received on the vessel on January 22, 1980, or January 25, 1980 the vessel can be considered unseaworthy.

The defendant in her Amended Defence says in para. 5 that she has no knowledge and requires strict proof from the plaintiffs that the "Reunion" was seaworthy.

Now, the burden of proving unseaworthiness rests upon the party asserting it and the party intending to rely upon unseaworthiness must plead it with sufficient particularity, (*Scrutton* on Charterparties 18th Ed. p. 84).

The changing of deck plates on the vessel merely involves the removal of old plates by gas-cutting and the replacement therefor by new plates and welding. It is not a repair job let alone major repair work as the defendant seems to suggest. The "Reunion" was in good running condition in January, 1980. She needed no repairs, she was in a condition to discharge the cargo she was carrying and carry fresh cargo and proceed to Chalna.

After the defendant cancelled the Charterparty the plaintiffs were looking for suitable cargo to carry. They could not get any and whilst waiting to perform the subsequent fixture, they carried out the deck plate changes. The vessel, however, remained on hire. All the vessel's trading papers were valid indicating the seaworthiness of the vessel and there was nothing outstanding which prevented the trading of the vessel.

The defendant pleads in para. 12 of the Amended Defence that the defendant first became aware on or around the February 19, 1982 that the plaintiffs were and are not the owners of the "Reunion" of which fact the defendant had no notice whatsoever. Therefore, the defendant denies that benefit of the Charterparty could ensure to the plaintiffs and require strict proof thereof. Consequently the plaintiffs have no cause of action against the defendant under the Charterparty.

The plaintiffs are long term charterers who had contracted as "owners" and not "an agents". The plaintiffs as against the shipowners have the right to enter into the voyage Charterparty (See *Scrutton* p. 1). They had complete control of the vessel and were in fact performing other fixtures with the vessel.

The following passage appears in *Scrutton* at p. 30 Art. 15:

"Where a person signs the Charter in his own name without qualification, he is *prima facie* deemed to contract personally, and, in order to prevent this liability from attaching, it must be clear from the other portions of the charterparty that he did not intend to bind himself as principal."

Here the plaintiffs described themselves as owners and they signed as owners. There is a special relationship between the registered owners and the plaintiffs. The Managing Director of the plaintiffs, P.W. 2, is also the Managing Director of the United Orient Lines, the registered owners. The evidence is that the plaintiffs assumed the responsibility of the owners and that P.W. 2 holds two-third shares in the plaintiff company and United Orient Lines.

Clearly the plaintiffs are the proper party to claim.

Finally, the defendant says that under the Uniform Time-Charter between the plaintiffs as charterers and United Orient Lines Ltd. as owners of the "Reunion" (Ex P 21), the plaintiffs were

allowed by Clause 2 to employ the "Reunion" in lawful trades for the carriage of lawful merchandise only but were absolutely prohibited from shipping any injurious, inflammable or dangerous goods. Notwithstanding the prohibition the plaintiffs deliberately failed to inform the defendant or her agent or attorney that the vessel could not carry the defendant's cargo, bitumen being dangerous goods. The defendant submits that this prohibited the plaintiffs from entering into the Charterparty with the defendant.

As I have stated the evidence is that there was very close relationship between the plaintiffs and the owners and the owners had no objection and had agreed to the carriage of bitumen. The vessel's insurance did not prohibit the carrying of the bitumen cargo. In any case, the defendant is not a party to the Charterparty P 21 and cannot complain if the plaintiffs carry cargoes against the principal Charterparty. This submission of the defendant is untenable.

For these reasons the plaintiffs must succeed in their claim for damages.

The defendant submits that the plaintiffs have not suffered from the repudiation and are entitled only to nominal damages. There is no substance in this submission.

There will be judgment for the plaintiffs in the sum of $188,670.60 with interest from January 25, 1980, till payment at the rate of 12% per annum and costs.

Claim allowed.

Solicitors: *Netto Low & Partners; G. Murugaiyan.*

CHIAM HENG HSIEN v. JURONG TOWN CORPORATION

[O.C.J. (Chua J.) August 23, 1983]
[Singapore – Civil Suit No. 3137 of 1978]

Administrative Law – Breach of natural justice – Wrongful dismissal – Damages awarded

Employment – Wrongful dismissal – Damages awarded.

The plaintiff in this case claimed for a declaration that his dismissal as an employee of the defendant was null and void and for "a declaration that he has continued to be and is in the employment of the defendant in the position that he held before June 23, 1976, and is entitled to be remunerated as such"; alternatively he claimed damages for wrongful dismissal.

The plaintiff was employed by the defendant on June 1, 1971 on 3 years' probation in the post of Executive Officer. On June 1, 1972 he was confirmed in the said post. One June 23, 1976 the defendant wrote to the plaintiff alleging that the plaintiff was an active partner of Mitre Hotel and also a partner of Pavilion Restaurant and had accordingly taken up part-time employment in violation of the Jurong Town Corporation's Terms & Conditions of Service, punishable under Rule 118. The plaintiff replied on June 24, 1976 explaining that he had merely succeeded to his late father's share and that he was not an active partner as alleged and denying that he was in breach of Rule 111. On September 7, 1976, the defendant informed the plaintiff that there would be a formal hearing by the Disciplinary Inquiry Committee on September 15, 1976. The Secretary of the Disciplinary Committee inquired whether the plaintiff would attend before the Committee. The plaintiff said that he had nothing further to add to what he had said in his letter. He did not attend before the Committee. On November 5, 1976 the defendant wrote to the plaintiff that he had been found guilty as charged and that his services with the defendant were terminated as from June 23, 1976. The plaintiff wrote to the Secretary on November 10, 1976 protesting against the decision to dismiss him.

Held: (1) it would be impossible to hold, having reference to the Employment Act and the Terms & Conditions of Service, that in this case there was security of tenure. It would need the clearest language to convince the court that a contract of personal service is intended to be a contract for life, or a contract to endure till a servant had reached the retiring age;

(2) the plaintiff's employment must be treated as having in fact come to an end on November 5, 1976, and the plaintiff's remedy lay in a claim for damages. He would therefore be awarded 3 months' salary.

Cases referred to:

(1) *Francis* v. *Municipal Councillors of Kuala Lumpur* [1962] 3 All E.R. 633.
(2) *Gunton* v. *London Borough of Richmond* [1980] 3 All E.R. 577.

CIVIL SUIT.

J. B. Jeyaretnam for the plaintiff.
Harry Elias for the defendant.

Cur. Adv. Vult.

Chua J.: The plaintiff's claim is for a declaration that his dismissal as an employee of the Jurong Town Corporation is null and void and for "a declaration that he has continued to be and is in the employment of the defendant in the position that he held before June 23, 1976 and is